

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DIEGO GONZALEZ,	§	
	§	No. 482, 2006
Defendant Below,	§	
Appellant,	§	Court Below--Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0602000725
Appellee.	§	

Submitted: October 13, 2006

Decided: January 8, 2007

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 8th day of January 2007, upon consideration of the appellant's opening brief and the appellee's motion to affirm, it appears to the Court that:

(1) The appellant, Diego Gonzalez, filed an appeal from the Superior Court's order of August 23, 2006 that denied his motion for reduction of sentence. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) On March 30, 2006, Gonzalez pleaded guilty in the Superior Court to one count of Aggravated Menacing. Gonzalez was sentenced to three years at Level V incarceration suspended for eighteen months at Level III probation.

(3) On July 7, 2006, Gonzalez was adjudged guilty of violation of probation. Gonzalez was sentenced to three years at Level V incarceration suspended for one year at Level IV Crest suspended upon successful completion for six months at Level III Crest.

(4) On August 10, 2006, Gonzalez filed a motion for reduction of sentence. Gonzalez contended that he was entitled to seventy days of credit for time that he served at Level V prior to his March 30, 2006 sentencing and also while he awaited placement at Crest.

(5) The Superior Court denied Gonzalez sentence reduction motion on the basis that Gonzalez had already been given credit for the time that he spent at Level V. This appeal followed.

(6) It is Gonzalez' burden to present evidence of an improper accounting of his Level V time. Gonzalez claims that he did not receive credit for the time he spent at Level V; however, he provides no evidence supporting that claim.

(7) Title 11, section 3901(c) of the Delaware Code requires that an inmate be credited with "any period of actual incarceration."¹ When a court reimposes a suspended portion of an original sentence following a finding of

¹Del. Code Ann. tit. 11, § 3901(c) (2001).

violation of probation, that sentence inherently credits the defendant with any time that the defendant has already served on the unsuspended portion of the original sentence.”²

(8) Based upon Gonzalez’ arguments and our review of the record, we are unable to conclude that Gonzalez was not credited with all of the Level V time to which he is entitled. Thus we can discern no error or abuse of discretion on the part of the Superior Court when denying Gonzalez’ motion for reduction of sentence.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

²*Ross v. State*, 2002 WL 1316250 (Del. Supr.).